

Decision Memo

Amendment of Special Use Permit SYL0026

**Region 8, Forest Service, U.S. Department of Agriculture
Sylamore Ranger District, Ozark-St. Francis National Forests
Stone County, AR**

Background

The US Forest Service is legislatively mandated to manage the renewable surface resources of the National Forests for the multiple use and sustained yield of products and services. Services include the issue of special use authorizations (permits) to use National Forest System (NFS) lands. Any changes to a permitted use area or authorized improvements on the permitted use area require amendment of the existing permit prior to implementation.

The well that served as the potable water source for the community of Fifty-Six, AR ran dry in 2020. To respond to that community's immediate, urgent need for a source of potable water, Sylamore District Ranger James R. McCoy authorized the issuance of a temporary permit for the installation of a surface water transmission line on NFS lands to connect the city to the Mountain View Public Water System. The entire length of the surface water line crosses both private and NFS lands occurring within a corridor running parallel to Arkansas State Highway 14 and within the roadway's existing cleared and maintained Right-of-Way (ROW) on its south side. The corridor is approximately 8-feet wide and extends from Hidden Ridge Road to the intersection of Arkansas State Highways 14 and 87. Pump stations necessary to keep water flowing along this route are located on private property. Only the portion of the water transmission line crossing NFS lands, approximately 4.5 miles total, is subject to the Forest Service's permitting requirements.

The mayor of Fifty-Six, Arkansas requested authorization to 1) bury the surface water line in its existing location and 2) fully authorize the additional length of utility corridor on the city's existing permit (SYL0026) to use or occupy NFS lands for a water transmission line. A design was submitted by the engineering firm contracted by the city of Fifty-Six, Arkansas; it describes the scope of work and includes a Best Management Practices (BMPs) plan for the entire length of the water transmission line.

During the week of February 14, 2020, an extensive winter storm brought heavy accumulations of snow and record low temperatures across Arkansas and much of the nation. With respect to the project area, pump stations for the surface water transmission line were disabled in rolling power outages during and following the storm. These conditions caused the surface water transmission line to freeze, leaving the residents of Fifty-Six, Arkansas without a source of potable water for several days and increasing the

potential risk to human health and safety. Currently, potential for freezing temperatures in the area will continue, increasing the level of urgency to bury the surface water transmission line.

This action is needed to ensure the residents of Fifty-Six have a permanent and reliable source of potable water and protect the health and safety of its residents.

Decision

My decision is to authorize the requested action. The existing use area identified on permit SYL0026 shall be modified to include an additional 4.5 miles of sub-surface utility corridor 8-feet in width and totaling approximately 3.2 acres of NFS lands. The corridor shall run parallel to and on the south side of Arkansas State Highway 14 within that roadway's existing cleared and maintained Right-of-Way.

All activities required to bury the surface water transmission line shall be conducted in accordance with applicable requirements of the 2005 Revised Ozark-St. Francis National Forests Land and Resource Management Plan (Forest Plan) as well as any applicable federal, state, and local laws, regulations and policies. All work will be subject to U.S. Forest Service inspection and approval.

In addition to the design and BMP plan submitted by the engineering firm, the following activities are authorized and shall be implemented.

1. Installation of the water transmission line will require digging a trench and the use of heavy equipment.
 - a. Ground disturbing activities shall be limited to the width of the utility corridor.
2. Application of the Arkansas Forestry Commission's Best Management Practices is also required to minimize erosion and the transport of sediments during this operation.
 - a. The contracted engineering firm's BMP plan will be followed, where applicable, on NFS acres.
3. Removal of trees and shrubby material shall be limited to only that required to bury the line.
 - a. Tree clearing to create staging and parking areas shall not occur on NFS lands.
4. Merchantable timber that is cut or destroyed shall be paid for at current stumpage rates for similar timber in the National Forest, and unmerchantable material shall be disposed of off-site.
5. To ensure impacts to roosting endangered bats are minimized:
 - a. Prior to cutting any standing trees three inches or greater in diameter at breast height approval and marking by the Forest Service will be required.

- Between March 15 and November 14, prior approval from the U.S. Fish and Wildlife Service must also be obtained.
- b. If possible, tree cutting should be limited to between December 1 and March 31. Outside this period, Visual Emergence Surveys or other surveys for endangered bat species may be required prior to cutting.
 6. If a cave or fracture is breeched or surface water is rerouted into karst all activities will cease, and the US Fish and Wildlife Service will be contacted to assess the situation and provide further consultation before proceeding.
 7. Should any action inadvertently uncover a previously unrecorded archaeological site or object(s), work would be halted, and the appropriate authorities would be notified.
 - a. Activities at that location would not resume until the resource is adequately protected and agreed-upon mitigations are implemented with the Arkansas State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officer(s) approval.
 8. Following burial of the water transmission line, disturbed soils shall be covered with topsoil, graded, seeded with annual rye grass and mulched. Proper clean-up and restoration shall be required.

Categorical Exclusion from Documentation in an Environmental Assessment or and Environmental Impact Statement

This action fits a category of actions excluded from documentation in an environmental impact statement (EIS) or an environmental assessment (EA). Specifically, the applicable category of actions is found at 36 CFR § 220.6(e)(3)(iv): *Approval, modification, or continuation of special uses that require less than 20 acres of NFS lands. (iv) Approving the use of land for a utility corridor that crosses a National Forest.* The Council of Environmental Quality (CEQ) has determined that the categorical exclusions contained in agency NEPA procedures as of September 14, 2020, are consistent with the new CEQ regulations [Federal Register / Vol. 85, No. 224 / page 73622 / Thursday, November 19, 2020].

This action involves modification of existing special use permit SYL0026 to use or occupy National Forest System lands for a water transmission line by expanding the existing permitted use area by approximately 3.2 total NFS acres.

I find there are no extraordinary circumstances that would preclude use of this category of actions. In reaching this finding, I took into account resource conditions identified in agency procedures that should be considered in determining whether extraordinary circumstances might exist.

Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species –At this time, no designated critical habitat as defined by the Endangered Species Act, no species proposed for federal listing and no proposed critical habitat occur on the Sylamore Ranger District.

The project area was surveyed for federally listed and USFS Regional Forester's (Region 8) sensitive listed species known to occur or with potential to occur on the Sylamore Ranger District and a Biological Assessment and Evaluation (BA/E) was completed for this action.

The BA/E considers all federally Threatened and Endangered (T&E) species (28 total) and all species identified as Sensitive (43 total) by the Regional Forester (USFS Region 8) that are known to occur or have potential to occur on the Ozark-St. Francis National Forests. Twenty-four federally listed species and 27 Regional Forester's sensitive listed species were eliminated from further consideration in the BA/E because 1) they do not occur on the Forest, and there is a lack of suitable habitat in the analysis area, 2) their known distribution is well outside the counties that make up the Sylamore Ranger District; 3) they were not found during surveys in the project area, and/or they are not known to occur within the project area. The proposed action will have "no effect" on those federal listed species and "no impact" on those Regional Forester's sensitive listed species.

The effects of the action were fully analyzed for the remaining four federally listed species and 16 Regional Forester's sensitive listed species due to their known occurrence on the Sylamore Ranger District or their potential for occurrence due to the presence of suitable habitat on the District and records nearby. The BA/E concludes that for the federally listed and USFS Regional Forester's (Region 8) sensitive listed species known to occur or with potential to occur on the Sylamore Ranger District there is no potential for change in suitable habitat for any threatened, endangered or Regional Forester's (Region 8) sensitive listed species relevant to this action. Neither is the action expected to alter current terrestrial or aquatic habitat conditions and use of the project area as described would not impact any habitat that might be used in future recovery efforts.

The determination of effect or findings of impact for individual species are as follows. Rationale for all effect determinations and findings of impact is documented in the BA/E.

Species	Determination of Effect or Finding of Impact
Gray bat, Ozark Big-eared bat	No Effect
Indiana bat	May affect, but not likely to adversely affect
Northern Long-eared bat	May affect, and is likely to adversely affect
Bald Eagle, Southern lady's slipper, Newton's larkspur, Glade larkspur, Open-ground draba, Butternut, Royal catchfly, Ozark Least trillium	No impact
Eastern small-footed bat, Tri-colored bat, Monarch butterfly, Ozark chinquapin, Church's wildrye, Ovate leaf catchfly, Ozark spiderwort, Ozark cornsalad	May impact individuals but [is] not likely to cause a trend to federal listing or a loss of viability

With respect to the “may affect, and is likely to adversely affect” determination for the Northern long-eared bat, there are no effects beyond those previously disclosed in the programmatic biological opinion on implementing the final 4(d) rule dated January 5, 2016, signed by Lynn Lewis. Any taking that may occur incidental to this project is not prohibited under the final 4(d) rule (50 CFR §17.40(o)). This project is consistent with the Forest Plan, the description of the Proposed Action in the programmatic biological opinion, and activities that do not require special exemption from taking prohibitions applicable to the Northern long-eared bat; therefore, the programmatic biological opinion satisfies the Forest Service’s responsibilities under ESA section 7(a)(2) relative to the Northern long-eared bat for this project.

The U.S. Fish and Wildlife Service’s Conway, Arkansas Field Office provided concurrence with the determinations and findings of that document on January 19, 2021.

Flood plains, wetlands, or municipal watersheds – Implementation of Best Management Practices is required for this action. No floodplains or wetlands on NFS lands will be affected by this action. There are no known cave or karst features within the NFS lands portion of the project area. The project area is located within the municipal watershed for Mountain View Waterworks; because this action is limited in context and intensity, and because Best Management Practices shall be applied, no noticeable effect to the municipal watershed is expected.

Congressionally designated areas such as wilderness, wilderness study areas, or national recreation areas – None of the project area is designated as wilderness, wilderness study areas or national recreation areas. The proposed use area is located within Management Area 1.H: *Scenic Byway Corridor* as delineated by the Revised Ozark-St. Francis National Forests Land and Resource Management Plan (Forest Plan) and subject to the Forest Plan objectives and standards therein. Management Area Standard MA1.H-7 states that scenic byway corridors are unsuitable for designation of new utility corridors, utility rights-of-way, or communication sites. In 2007, an action involving installation of a subsurface water transmission line on NFS lands within another section of Arkansas Highway 14’s ROW was analyzed. The project record for that action documents the intent of MA1.H-7 was to limit adverse visual impacts of new utility corridors. Evidence of disturbance and visual impacts would be limited to a short timeframe. It was determined that action would not violate the intent of MA1.H-7. The circumstances and conditions of the 2007 project mirror those of the current action; therefore, it is reasonable to conclude the same determination would apply. Further, the long-term benefits to human health and safety would outweigh any short-term negative impacts.

Inventoried roadless areas or potential wilderness areas – None are present in the project area; therefore, no impacts are expected.

Research natural areas – None are present in the project area; therefore, no impacts are expected.

American Indians and Alaska Native religious or cultural sites and Archaeological sites, or historic properties or areas –The NFS lands comprising the ROW of Arkansas State Highway 14 were previously disturbed and are routinely maintained in an open condition through mowing. Existing records were searched and surveys for heritage properties within the project area were conducted. There are no known heritage properties within the area of potential effect. Nonetheless, it is recognized heritage properties and their components may be undetected for a variety of reasons. The project's design elements require work to be halted if any action inadvertently uncovers a previously unrecorded archaeological site or object(s) and immediate notification of same to the appropriate authorities. Work would not resume until the resource is adequately protected and agreed-upon mitigations are implemented with SHPO and Tribal Historic Preservation Officer(s) approval.

The consultation process outlined in Section 106 of the National Historic Preservation Act (NHPA) was completed on April 14, 2021. Concurrence that no known historic properties would be affected by this undertaking was received from the SHPO on March 17, 2021 and is on file in the project record.

Public Involvement

On October 30, 2020, scoping notices for the *Amendment of Special Use Permit SYL0026 Project* were mailed or e-mailed to 1) Native American Tribal leaders and the respective Tribes Historic Preservation Offices; 2) other agencies and government officials, and 3) those who have asked to be notified when all projects are proposed. Scoping notices included a letter describing the Proposed Action and requesting comment as well as a vicinity map. The scoping notice was also posted to the Ozark-St. Francis National Forests' project webpage at that time.

A total of five comments have been received to date. One Tribal Historic Preservation Office (THPO) provided notice that their Tribe had interest as acting as a consulting party for the project but did not foresee its implementation imparting impacts to their Tribe's cultural resources at this time. One THPO requested copies of all SHPO correspondence via hardcopy mail and a third provided direction for submittal of future scoping notices. An automated response from the SHPO acknowledged receipt of the scoping notice and a response from the Arkansas Archaeological Survey indicated that office had no objection to the project. No issues relevant to implementing the described activities that would preclude use of the category of actions identified at 36 CFR § 220.6(e)(3)(iv) were identified through these comments. All were provided to the Forest Heritage Program Manager as they were relevant to the consultation process outlined in Section 106 of the NHPA.

A complete list of those to whom letters were mailed via USPS or electronically as well as the comments received are part of the project record.

Findings Required by Other Laws and Regulations

This action does not violate or threaten to violate any federal, state or local laws or regulations. This decision is consistent with direction outlined in the Forest Plan to maintain a steady flow of goods and services to prevent changes in local social and economic conditions. It responds to a need to supply potable water to a rural community to protect and provide for the health and safety of that community's population.

Administrative Review Opportunities

Decisions that are categorically excluded from documentation in an environmental assessment or environmental impact statement are not subject to an administrative review process (Agriculture Act of 2014 [Pub. L. No. 113-79], Subtitle A, Sec. 8006).

Implementation Date

Amendment of SYL0026 as described in this Decision Memo may commence immediately. Burial of the water transmission line may begin as soon as the permit amendment process is complete.

Contact

For additional information concerning this decision, contact Zone Realty Specialist Kenney Smedley at 479-284-3150 or kenney.smedley@usda.gov.

A handwritten signature in blue ink, reading "Lori D. Wood".

LORI D. WOOD
Forest Supervisor

4/19/2021
Date



SDA NON-DISCRIMINATION POLICY STATEMENT

DR 4300.003 USDA Equal Opportunity Public Notification Policy (June 2, 2015)

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer and lender.